

Congress expressed its clear intent through the must-carry provisions to "promote competition in local markets."<sup>38</sup> ADIs (or DMAs) were the means through which Congress decided to fulfill these stated goals. Using DMAs to define must-carry markets allows smaller, specialty stations to compete and, in turn, increase programming diversity throughout those markets. Paxson's proposal would further Congress' intent by allowing television stations to expand their local service by increasing their viewership and advertising revenues, and to compete with established stations in their industry-defined markets as the additional and diverse broadcast "voices" that Congress intended. Paxson's proposal, moreover, would enable the Commission to quickly dismiss petitions filed by cable operators that do not meet the threshold requirement of furthering the "value of localism." Commission resources would not be wasted in addressing cable operators' attempts to avoid their must-carry obligations without otherwise establishing that (1) the cable system is capacity constrained *and* (2) denial of must-carry rights of a particular broadcast station in favor of another broadcaster would demonstrably advance the "localism" interests Congress sought to encourage. Relieved of the burden of handling deletion requests that do not further statutory objectives, the Commission would be able to comply easily with Congress' 120-day deadline for the processing of petitions for special relief in the narrow range of circumstances where they are appropriate and consistent with Congressional intent.

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<sup>38</sup> H.R. Conf. Rep. No. 102-862, at 75 (1992), *reprinted in* 1992 U.S.C.C.A.N. 1231, 1257.

**III. THE COMMISSION SHOULD NOT CODIFY EVIDENTIARY PROCEDURES THAT IMPROPERLY PLACE DISPOSITIVE RELIANCE ON GRADE B COVERAGE AND DISTANCE IN MARKET MODIFICATION DECISIONS AND DISCRIMINATE AGAINST SMALLER, INDEPENDENT STATIONS -- THE VERY STATIONS CONGRESS SOUGHT TO PROTECT IN PASSING THE 1992 CABLE ACT**

The Commission next seeks comment on a number of "evidentiary requirements" that it believes will enhance the market modification process and possibly streamline the administrative burden associated with modification petitions filed under Section 614(h).<sup>39</sup> In addition, the Commission asks for comment on its proposal to alter the burden of producing relevant evidence in a market modification dispute.<sup>40</sup> Paxson respectfully submits that the specific proposals set forth in the *Further Notice* will serve only to codify the Bureau's improper reliance on Grade B coverage and distance as dispositive factors in its market modification decisions. If either of the Commission's proposals are adopted, the value of localism will be further diminished because independent stations will be forced to jump through extraordinary evidentiary hoops merely to preserve the opportunity to serve individual local communities throughout their Congressionally mandated markets.

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<sup>39</sup> *Further Notice* ¶ 52.

<sup>40</sup> *Id.* ¶ 53.

**A. The Bureau's Prior Market Modifications Contravene the 1992 Cable Act by Using Grade B Contours and Distance as Decisive Factors**

Even though the Bureau itself has acknowledged that stations are entitled to carriage beyond their Grade B contours where they can provide a good quality signal to the cable headends,<sup>41</sup> the Bureau, in its previous market modifications, has consistently substituted the Grade B standard for the market definition chosen by Congress. *See* Exhibit 1 attached hereto (matrix outlining the factors considered by the Bureau in response to each ADI modification request seeking to delete cable communities). Even a cursory review of the Bureau's decision-making process and outcomes (as depicted in the attached matrix) reveals an almost exclusive reliance upon Grade B contour coverage. Taken to their logical conclusion, the Bureau's prior cases would permit cable operators to invoke the market modification procedures -- which were intended only as a narrow "fine-tuning" device -- to substitute the Grade B or mileage based standard rejected by Congress in 1992 and effectively write the must-carry provisions out of the statute.

For example, in the New York ADI, WHAI-TV (licensed to a Paxson subsidiary) has been denied its carriage rights throughout New York City (Manhattan, Queens, Western Brooklyn, and Staten Island), Long Island, and most of New Jersey.<sup>42</sup> Similarly, many communities in New York City, Long Island, and New

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<sup>41</sup> *See, e.g.*, Letter from Meredith J. Jones to John R. Feore, Jr., December 9, 1994.

<sup>42</sup> *See Time Warner New York City Cable Group*, CSR-4794-1, DA 96-1545 (rel. (continued...))

Jersey have also been deleted from the must-carry market of WRNN-TV, licensed to Kingston, New York.<sup>43</sup> WMBC-TV, (Newton, New Jersey), WLIG, (Riverhead, New York), and WTBY (Poughkeepsie, New York), have also been denied carriage rights throughout New York City, Long Island and New Jersey.<sup>44</sup> In fact, based "largely on Grade B coverage, physical proximity and accessibility" the Bureau has

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<sup>42</sup>(...continued)

Sept. 17, 1996) (deleting various New York City communities); *Time Warner Entertainment-Advance/Newhouse Partnership*, CSR-4051-A, DA 96-830 (rel. May 31, 1996) (deleting communities from southern Bergen County, New Jersey); *Continental Cablevision of Western New England, Inc.*, CSR-4019-A, DA 96-827 (rel. May 31, 1996) (deleting communities throughout Rockland and Westchester Counties, New York); *Cablevision Systems Corp.*, CSR-3873-A, DA 96-826 (rel. May 31, 1996) (deleting communities in Long Island, New York City and throughout the New York counties of Dutchess and Westchester, as well as the New Jersey counties of Bergen and Monmouth); *Comcast Cablevision of Monmouth County et. al.*, CSR 4549-A, DA 96-450 (rel. Apr. 4, 1996) (deleting communities from Monmouth County, Ocean County, and communities throughout Northwest and Central New Jersey).

<sup>43</sup> *Comcast Cablevision of Monmouth County et. al.*, CSR-4556-A, DA 96-825 (rel. May 31, 1996) (deleting communities throughout southern, northern and central New Jersey); *Time Warner New York City Cable Group*, CSR-4416-A, DA 96-829 (rel. May 31, 1996) (deleting various New York City communities); *Time Warner Entertainment-Advance/Newhouse Partnership*, CSR- 4051-A, DA 96-830 (rel. May 31, 1996) (deleting communities in southern Bergen County, New Jersey); *Continental Cablevision of Western New England, Inc.*, CSR-4019-A, DA 96-827 (rel. May 31, 1996) (deleting communities in Rockland and Westchester County, New York); *Cablevision Systems Corp.*, CSR-3873-A, DA 96-826 (rel. May 31, 1996) (deleting communities in Long Island, New York City and throughout New Jersey).

<sup>44</sup> See e.g., *Cablevision of Monmouth, Inc.*, CSR-4726-A, DA 96-1266 (rel. Aug. 14, 1996) (deleting communities in Monmouth County, New Jersey from WMBC-TV's market); *Comcast Cablevision of Monmouth County et. al.*, CSR-4563-A, DA 96-824 (rel. May 31, 1996) (deleting communities in Monmouth and Ocean Counties as well as Northwest and Central, New Jersey from WLIG's market); *Time Warner New York City Cable Group*, CSR-4415-A, DA 96-831 (rel. May 31, 1996) (deleting various New York City communities from WTBY's market).

gone so far as to subdivide a city by granting a cable operator's request to delete two of the five boroughs of New York City.<sup>45</sup> Without carriage in the core area of their ADI (or DMA), stations such as these will face nearly insurmountable difficulties in their efforts to provide effective competition to more established stations in the market.

Congress *specifically rejected* a mileage-based or similar geographic approach when it determined to define a station's market by reference to ADIs. The original cable legislation, introduced in 1991 as S.12 in the Senate and H.R. 1303 in the House, limited mandatory carriage rights to those cable systems within a 50-mile radius of the station's community of license.<sup>46</sup> The Senate bill was amended during the floor debate, however, to replace the mileage-based standard for must-carry qualification with an ADI-based test.<sup>47</sup> Similarly, H.R. 4850, the subsequent, ultimately passed version of the 1992 Act, based must-carry rights upon a station's ADI.<sup>48</sup> The House Report stated that "ADI lines are the most widely accepted definition of a television market *and more accurately delineate the area in which a station provides local service than any arbitrary mileage-based definition.*"<sup>49</sup> Given Congress' unambiguous

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<sup>45</sup> See *Time Warner New York City Cable Group*, CSR-4415-A, DA 96-831, ¶ 24 (rel. May 31, 1996)(deleting Brooklyn and Queens but not Staten Island and Manhattan).

<sup>46</sup> See S. 12, 102d Cong., 1st Sess. §§ 4(g) and 15 (1991); H.R. 1303, 102d Cong., 1st Sess. § 5(a) (1991). H.R. 1303 preceded H.R. 4850, the legislation that passed the House in 1992.

<sup>47</sup> See 138 Cong. Rec. S609 (daily ed. Jan. 29, 1992)(amendment by Sen. Inouye).

<sup>48</sup> See H.R. 4850, 102d Cong. 2d Sess. § 6 (1992).

<sup>49</sup> H.R. Rep. No. 102-628, at 97 (1992) (emphasis added).

rejection of an arbitrary mileage based market definition, the Bureau's use of a *de facto* Grade B standard (which for all practical purposes is no different than a mileage standard) is wholly insupportable.

Based on the Bureau's almost exclusive emphasis on signal coverage, moreover, the DMA-wide mandatory carriage contemplated by Congress could be denied to virtually any station. Only well-established stations with sufficient bargaining power to elect retransmission consent procedures would achieve carriage outside of their Grade B coverage areas. Thus, must-carry protection would effectively be denied to the very stations for whose benefit the statute was enacted and the only stations that really need it to reach the full commercial marketplace in which they must compete for audience and revenue. Again, the Bureau's actions, like the agency described in the analogy above, do not provide the small competitor with an opportunity to grow. Similarly, the Bureau's interpretation of the market modification procedures perpetuates the dominance of larger established stations and cable operators at the expense of the smaller stations Congress intended to aid, and the competition and program diversity it intended to foster.<sup>50</sup>

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<sup>50</sup> The Bureau, moreover, has wrongly interpreted Section 614(h)(1)(C)(iii) of the Act as providing for an automatic stay of an operator's must-carry duties upon the filing of a petition to avoid carriage. The Bureau's flawed interpretation evidently is based on its misreading of the Commission's implementation of this provision of the 1992 Cable Act. Section 614(h)(1)(C)(iii) states that "[a] cable operator shall not delete from carriage the signal of a commercial television station during the pendency of any proceeding pursuant to this subparagraph." In its *Must-Carry Order*, the Commission determined that Section 614(h)(1)(C)(iii) required a cable operator to maintain the "status quo" with regard to signal carriage during the pendency of a market-

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**B. The Commission's Proposed Changes to the Market Modification Procedures Will Discriminate Against Small Specialty Stations**

The Commission proposes to require that each market modification petition include exhibits showing geographic features and relevant mileage, historical cable carriage, contour maps, information regarding community-specific (rather than DMA-wide) local programming, audience data for cable and non-cable homes, and transportation, shopping, and labor pattern data.<sup>51</sup> The Commission's proposal, like past Bureau decisions, places far too much emphasis on distance, geography, and Grade B coverage. The Commission's reliance on these factors cannot be supported by reference to the statutory language. On the contrary, as stated above, Congress explicitly rejected the narrow geographic definition of television markets the Commission now attempts to re-establish so that such stations would be given the opportunity to provide market-wide service, thereby fostering programming diversity and economic competition.

The Commission's suggested emphasis on historic carriage and audience data also would allow for discrimination against small specialty stations. The Bureau itself has even recognized the possibility of such discrimination. Thus, the Bureau generally

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<sup>50</sup>(...continued)  
modification petition. 8 FCC Rcd at 2977. Contrary to the Bureau's interpretation, the most natural and logical reading of this language -- especially in light of the statute's plain terms and intent -- is that "status quo" refers not only to instances in which an operator is already carrying the signal of a station, but also cases in which the operator *should be carrying the signal* in accordance with the statute. Clearly, Congress did not envision non-compliance with the law as the status quo.

<sup>51</sup> See Report and Order ¶ 52.

discounts historic carriage in the context of a new station subject to market modification. Specifically, the Bureau has stated that "[w]here . . . a petitioner seeks to delete a station from a relevant ADI with respect to a cable system, [it] believe[s] that failure to establish historic carriage should not be given great weight."<sup>52</sup> Further, the Bureau has held that historic carriage is not controlling with respect to smaller stations because undue reliance on historic carriage "would, in effect, prevent weaker stations which cable systems had previously declined to carry, from ever being carried."<sup>53</sup> The Bureau also has recognized that the "1992 Cable Act was adopted . . . in part, to cure past discriminatory signal carriage practices. Thus, the absence of historic carriage cannot by itself be used to justify a refusal of carriage in the future."<sup>54</sup>

Similarly, with regard to the fourth statutory factor -- audience ratings -- the Bureau has found that specialty stations "are capable of 'offer[ing] desirable diversity of programming . . . ' yet typically attract limited audiences"<sup>55</sup> and that specialty

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<sup>52</sup> *Time Warner Cable*, 10 FCC Rcd 936, 938 (Cable Serv. Bur. 1995); *see also North Central Cable Communications, Inc.*, 10 FCC Rcd 4381, 4383 (Cable Serv. Bur. 1995).

<sup>53</sup> *Time Warner Cable*, 10 FCC Rcd 8045, 8048 (Cable Serv. Bur. 1995); *Greater Worcester Cablevision*, 10 FCC Rcd 12569, 12572 (Cable Serv. Bur. 1995); *Time Warner Cable*, 10 FCC Rcd 6663, 6667 (Cable Serv. Bur. 1995).

<sup>54</sup> *Kansas City Cable Partners*, 10 FCC Rcd 3807, 3809 (Cable Serv. Bur. 1995).

<sup>55</sup> *Nationwide Communications, Inc.*, 10 FCC Rcd 13050, 13053 (Cable Serv. Bur. 1995) (quoting *First Report and Order in Docket 20553*, 53 F.C.C.2d 442, 452 (1976), *recon. denied*, 60 F.C.C.2d 661 (1976)); *see also Home Shopping Stations Issues, Report and Order*, 8 FCC Rcd 5321, 5327 (1993).



stations enjoy "significant viewership" despite a lack of any concrete evidence on the subject of ratings. The Bureau has even held that ratings are of no probative value when a cable operator seeks to delete a "struggling independent station:"

Congress could not have intended for [a struggling independent station] to be deleted from its market solely because its audience share is not as significant as the several other stations it competes with; if this were the case, the 1992 Cable Act would have designated a ratings mechanism, rather than ADIs, as the primary determinant for broadcast signal carriage.<sup>56</sup>

Furthermore, the Commission's request for "information regarding coverage of news or other programming of interest . . . *that address[es] issues of importance in the community in question and not the market in general*" unduly favors established, larger stations that typically do not need to rely on must-carry rights for carriage in the first place.<sup>57</sup> Few if any stations are able to provide programming with specific ties to every community within an ADI. Moreover, there is little economic incentive or ability for a station to provide programming to communities in which it is not carried on the local cable system.<sup>58</sup>

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<sup>56</sup> *Greater Worcester Cablevision*, 10 FCC Rcd at 12572.

<sup>57</sup> *Further Notice* ¶ 52 (emphasis added).

<sup>58</sup> In this regard, a number of local ethnic and minority controlled or affiliated organizations have declined to purchase time on Paxson's WHAI-TV due to the station's lack of cable carriage in New York City. Restoration of WHAI-TV's Congressionally mandated carriage rights would enable the station to build an audience and advertising base in the New York area which would support more locally-oriented programming initiatives. See Petition for Reconsideration of Paxson New York License, Inc., CSR-4794-A, filed October 17, 1996, at Exhibit 1 and 2.

Alternatively, the Commission proposes to expedite consideration of market modification requests by "permitting the party seeking the modification to establish a *prima facie* case based on historical carriage, technical signal coverage of the area in question, and off-air viewing."<sup>59</sup> The Commission would then place the burden on "any objecting entity to complete the factual record by presenting conflicting evidence as to the actual economic market involved."<sup>60</sup> This approach clearly discriminates against small specialty stations that are not currently carried on cable systems and effectively writes Congress' intended presumption in favor of market-wide carriage of stations out of the statute. Indeed, Congress believed that "in most instances a station's ADI [or DMA] is consistent with the area where such station provides local service."<sup>61</sup> Congress explicitly stated that a *cable system* must "point to *particularized evidence* that its community is not part of one station's market."<sup>62</sup> In other words, the burden is, and should be, on the cable operator seeking a community deletion -- and not on the affected broadcaster -- to provide "particularized evidence" to justify market modification. Clearly, the Commission's proposal to allow cable operators to establish a rebuttable *prima facie* case through a showing based simply on signal coverage, off-air viewing, or historical carriage, contradicts the express intent of Congress.<sup>63</sup>

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<sup>59</sup> *Further Notice* ¶ 53.

<sup>60</sup> *Id.*

<sup>61</sup> H.R. Rep. No. 102-628, at 97 (1992).

<sup>62</sup> *Id.* at 98 (emphasis added).

<sup>63</sup> *See id.*

The Commission's proposal, moreover, would extend the market modification process substantially beyond the fine tuning device contemplated by Congress. Indeed, it would substantially gut the Congressionally mandated DMA-based scheme. Far from "better effectuat[ing] the purposes" of the must-carry requirements, as the Commission suggests,<sup>64</sup> its proposal would hinder the development of diverse programming and serve only to perpetuate the dominance of larger, established stations and cable operators, at the expense of the smaller stations Congress intended to aid.

**IV. AT A MINIMUM, THE COMMISSION'S NEW MARKET MODIFICATION PROCEDURES SHOULD ENSURE THAT STATIONS WHICH COMMIT TO PROVIDING LOCALLY PRODUCED PUBLIC INTEREST PROGRAMMING ARE CARRIED THROUGHOUT THEIR DMAS**

If the Commission determines, however, not to adopt the proposal set forth in Section II above, its current analysis, at a minimum, should be modified to encourage broadcasters to commit to providing more locally produced public interest programming. Specifically, Paxson supports the proposal advanced by WRNN-TV Associates Limited Partnership ("WRNN") in its Reply Comments to the original Notice of Proposed Rule Making in this proceeding and upon which the Commission invites comment.<sup>65</sup>

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<sup>64</sup> *Further Notice* ¶ 53.

<sup>65</sup> Reply Comments of WRNN-TV Associates Limited Partnership to the FCC Dec. 8, 1995 Notice of Proposed Rule-Making, CS Docket No. 95-178, FCC 95-489, at 4-6 (filed Feb. 26, 1996) ("WRNN Reply Comments").

As the Commission notes in its *Further Notice*, WRNN proposes that a broadcaster that "pledge[s] to provide" concrete amounts of public interest programming should receive a preference for full market-wide carriage, irrespective of any other factors in the market modification analysis.<sup>66</sup> Specifically, WRNN states that

one way to break the circularity and arbitrariness of market definitions is for the Commission to revise Section 76.59 of its rules to add an explicit statement that in determining modification of television markets, broadcasters who otherwise qualify for must-carry (*i.e.*, located in the relevant television market, delivers adequate signal, not duplicated by any other signal, cable operator not at must-carry capacity) and pledge to provide concrete amounts of public interest programming receive added preference to full market-wide carriage irrespective of any other factors in the market modification analysis.<sup>67</sup>

Unlike the Commission's current misapplication of the statutory factors and resulting reliance on Grade B coverage and distance, as explained above, adoption of WRNN's proposal would establish a presumption that specifically advances the intent of Congress in implementing the must-carry regime and promoting local service. Thus, if adopted, WRNN's proposal would encourage more specific locally produced public interest programming commitments from broadcasters as well as further the goals of programming diversity.

In sum, WRNN's proposal will allow emerging stations the opportunity to implement plans for local service. Without obtaining carriage on cable systems, a

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<sup>66</sup> WRNN Reply Comments at 5.

<sup>67</sup> *Id.*

small station will not be able to expand its local service by increasing its viewership and advertising revenues, nor will such a station be able to compete with established stations in their industry-defined market as the additional and diverse broadcast "voice" that Congress intended. Without careful restriction of the community deletion process or, at a minimum, adoption of a presumption similar to that suggested by WRNN, cable operators will be able to continue to manipulate the market modification process in order to evade carriage of small specialty stations like those owned and operated by Paxson.

The Commission's concern that WRNN's proposal inappropriately puts one statutory factor (local, public interest oriented programming) ahead of other statutory factors is misplaced.<sup>68</sup> First, WRNN's proposal still requires that a broadcaster otherwise qualify for must-carry before the public-interest presumption will apply. Second, as discussed above, the Bureau itself has often given differing weights to each of the four statutory factors depending upon the specific details of a proposed market modification. Especially in the context of newer, emerging stations, the Bureau understands that the four statutory factors cannot always be applied evenly. The Bureau itself has stated that historical carriage should not be given great weight because the "1992 Cable Act was adopted . . . in part to cure past discriminatory signal carriage practices."<sup>69</sup>

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<sup>68</sup> See *Further Notice* ¶ 52 n.133.

<sup>69</sup> *Kansas City Cable Partners*, 10 FCC Rcd at 3809.

Similarly, the Bureau has held that provision of local coverage of the cable communities by other stations provides *no* basis for deletion of communities from a market. The Bureau has explained that it does

not believe that Congress intended this criterion to operate as a bar to the station's ADI claim whenever other stations could also be shown to serve the communities at issue, but rather that this criterion was intended to enhance a station's claim where it could be shown that other stations *do not* serve the communities at issue.<sup>70</sup>

Indeed, the Bureau previously has concluded that Congress intended that the FCC should *not* consider this factor in evaluating a cable operator's deletion request:

Contrary to the views expressed by [the cable operator seeking deletion of a station], *and consistent with Congressional intent*, we do not believe the enhancement criterion should be used by a cable operator to bolster its request to delete communities from a station's television market whenever it could show that other stations in the market serve the cable communities.<sup>71</sup>

The Bureau also recognized that Congress could not have intended for small independent stations to be deleted based on audience shares -- "if this were the case, the 1992 Cable Act would have designated a ratings mechanism . . . as the primary determinant for broadcast signal carriage."<sup>72</sup>

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<sup>70</sup> *Kansas City Cable Partners*, 10 FCC Rcd at 3809 n.14 (emphasis in original); see also *Northern Central Cable Communications*, 10 FCC Rcd at 4383; *Time Warner Cable*, 10 FCC Rcd at 8053 n.15.

<sup>71</sup> *Nationwide Communications, Inc.*, 10 FCC Rcd at 13053 n.22 (emphasis added).

<sup>72</sup> *Greater Worcester Cablevision*, 10 FCC Rcd at 12572. Furthermore, transportation, shopping and labor pattern data is presumptively incorporated into the DMA designation.

Although the Bureau has not been willing to explicitly state that one statutory factor is more important than any other, it has consistently made allowances to further the intent of Congress and promote diverse, local programming. By establishing a presumption in favor of those stations willing to go on record with a commitment to present locally produced, public interest programming, the Commission could indeed "better effectuate" the purposes of Section 614 of the 1992 Cable Act by ensuring cable carriage of local stations so that such stations can support the origination of local programming and compete with established stations and cable operators in a diverse television marketplace.

**V. PAST MARKET MODIFICATION DECISIONS SHOULD BE SUBJECT TO *DE NOVO* REVIEW BY THE COMMISSION IN LIGHT OF THE REVISED MARKET DEFINITION AND MODIFICATION PROCEDURES**

Finally, the Commission expresses concern about what effect the change to DMAs should have on previous modifications of station's must-carry markets pursuant to Section 614(h) of the 1992 Cable Act.<sup>73</sup> Paxson submits that the differences between ADIs and DMAs are significant enough to warrant a "fresh look" at the Bureau's previously decided market modification decisions. As the Commission observed in the *Report and Order*, a significant number of markets will be affected (*i.e.*, markets that will gain or lose counties) by the transition to DMAs from ADIs.<sup>74</sup> Accordingly, past decisions predicated upon an ADI standard should be subject to *de*

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<sup>73</sup> *Further Notice* ¶ 51.

<sup>74</sup> *Report and Order* ¶ 18.

*nov*o reconsideration under the special relief process established by Section 614(h)(1)(C). Allowing earlier ADI-based decisions to stand in the new regime of DMA-based market-designations will only perpetuate further reliance on what is already an outdated standard.

As explained above, moreover, the Bureau's previous market modifications contravene the 1992 Cable Act. The adoption of the DMA standard presents an opportunity for the Commission to implement the market modification process as Congress intended. Therefore, Paxson submits that past market modifications should be superseded in the transition to DMAs and should be subject to *de novo* review in accordance with procedures designed to ensure cable carriage of local commercial television stations throughout the markets in which they compete for programming, viewers, and advertising revenues.

## CONCLUSION

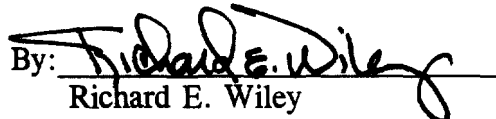
For the reasons set forth above, Paxson believes that the Commission's specific proposals to alter the market modification process through "evidentiary specifications" or reallocation of pleading burdens are misdirected and should not be adopted. As currently formulated, the Commission's proposals would do nothing more than codify the existing Bureau policy that improperly places dispositive reliance on Grade B contours and distance in making market modification decisions. As an alternative to the Commission's proposal, Paxson suggests that the Commission enhance and improve the market modification process by adopting a decisional framework that will limit



community deletions that serve only to enable cable operators to reduce their carriage obligations and, instead, advance the values of localism as intended by Congress in its passage of the 1992 Cable Act.

Respectfully submitted,

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# **EXHIBIT 1**

**REQUESTS TO DELETE COMMUNITIES FROM MUST-CARRY TELEVISION MARKETS**

<b>DATE RELEASED</b>	<b>DOCKET</b>	<b>FCC ACTION</b>	<b>FORMAT</b>	<b>DISTANCE (TERRAIN)</b>	<b>SERVICE CONTOUR</b>	<b>HISTORICAL CARRIAGE</b>	<b>LOCAL CONTENT</b>	<b>OTHER SERVICE</b>	<b>RATINGS</b>
09/17/96	CSR-4794-A Time Warner New City Cable Group WHAJ, Bridgeport, CT	Granted	Informercial	65 Miles	No Grade B	No	No	Yes	No
08/20/96	CSR-4722-A CSR-4707-A Dynamic Cablevision of Florida, Ltd. and Continental Cablevision of Jacksonville, Inc. WEYS, Key West, FL	Granted	Latin American Programming	126 Miles	No Grade B	No (Only been carried since June 1993 pursuant to the 1992 Cable Act)	No (General interest to the ADI's Hispanic population but not specifically relevant to the communities)	Yes	Not a level sufficient to satisfy this factor (reputable ratings only during certain day parts)
08/14/96	CSR-4726 Cablevision of Monmouth, Inc. WMBC-TV, Newton, NJ.	Granted	Family Oriented	59, 70, 72, 84 miles.	No Grade B	None	No (General interest including foreign language programming, but no specific ties to the communities)	Yes	No
07/17/96	CSR-4683-A Time Warner Cable KKAG, Porterville, CA	Denied	Home Shopping	60 miles form community of license; 73 miles from transmitter	Grade B	None	N/A	Yes	None

DATE RELEASED	DOCKET	FCC ACTION	FORMAT	DISTANCE (TERRAIN)	SERVICE CONTOUR	HISTORICAL CARRIAGE	LOCAL CONTENT	OTHER SERVICE	RATINGS
06/05/96	CSR-4010-A Marcus Cable Associates, L.P.  WNGM-TV, Athens, GA WAGA-TV, Atlanta, GA WATL-TV, Atlanta, GA WSB-TV, Atlanta, GA WTBS-TV, Atlanta, GA WVEV-TV, Atlanta, GA WXIA-TV, Atlanta, GA WHSG-TV, Atlanta, GA WTLK-TV, Rome, GA Atlanta, GA ADI	Granted	N/A	N/A	No Grade B	None	N/A	Local service from stations in Columbus, GA ADI	N/A
06/03/96	CSR-4602-A Cablevision of Cleveland, L.P. and V Cable, Inc., d/b/a Cablevision of Ohio WGGN-TV Cleveland, Ohio ADI	Granted	Religious	41-85 miles for granted portions.	No Grade B for vast majority of communities.	None	No (not shown for North-Central Ohio)	Yes	Low/none
		Denied	Religious	35, 32, 31 miles for denied portions	Request denied for Sheffield system, within Grade B contour	None	No	Yes	Low/none
05/31/96	CSR-4563-A Comcast Cablevision of Monmouth County et al. WLIG-TV, Riverhead, NY New York, NY ADI	Granted	General	84 miles from most distant headends, 75 miles from closest NJ system (New York City)	Outside Grade B	None	No	Yes	Low/none

DATE RELEASED	DOCKET	FCC ACTION	FORMAT	DISTANCE (TERRAIN)	SERVICE CONTOUR	HISTORICAL CARRIAGE	LOCAL CONTENT	OTHER SERVICE	RATINGS
05/31/96	CSR-4556-A Comcast Cablevision of Monmouth County et al. WRNN-TV, Kingston, NY New York, NY ADI	Granted	General	88 miles from nearest headends; 130 miles from most distant headend (state lines)	No Grade B	None	No (small amount of programming insufficient to overcome lack of Grade B coverage and other factors)	Yes	No (Nielsen has assigned Station to Albany-Schenectady-Troy DMA)
05/31/96	CSR-4416-A Time Warner New York City Cable Group WRNN, Kingston, NY New York, NY ADI	Granted	General	94 miles avg.	Outside Grade B, although translator does clip Northern Manhattan	None	No	Yes	No (Nielsen has assigned to Albany-Schenectady-Troy DMA)
05/31/96	CSR-4415-A Time Warner New York City Cable Group WTBY, Poughkeepsie, NY New York, NY ADI	Granted	Religious	72 mile avg. (elevated terrain between NYC and Poughkeepsie)	Outside Grade B, although B does clip Northern Manhattan	None	No	Yes	Low/none
05/31/96	CSR-4413-A Time Warner New York City Cable Group WMBC, Newton, NJ New York, NY ADI	Granted <sup>1</sup>	General/foreign language (minority owned: Asian-American)	"Effective distance" is greater than actual (New York Harbor)	No Grade B	None	No	Yes	No
		Denied <sup>2</sup>	General/foreign language (minority owned: Asian-American)	Approximately 40 miles	Grade B	None	Yes (Field office noted)	N/A	No

<sup>1</sup> Granted with respect to Brooklyn and Queens communities.

<sup>2</sup> Denied with respect to Staten Island and Manhattan communities.

DATE RELEASED	DOCKET	FCC ACTION	FORMAT	DISTANCE (TERRAIN)	SERVICE CONTOUR	HISTORICAL CARRIAGE	LOCAL CONTENT	OTHER SERVICE	RATINGS
05/31/96	CSR-4051-A Time Warner Entertainment- Advance/Newhouse Partnership <sup>3</sup> (New York, NY ADI)								
	WLIQ, Riverhead, NY	Granted	General	58 avg. (New York City and Hudson River)	No Grade B	N/A	No (majority tailored toward general interest)	Yes (other stations with closer economic nexus)	N/A
	WHA1-TV, Bridgeport, CT (Petition unopposed by WHA1-TV)	Granted	Home shopping	61 avg. (New York City and Hudson River)	No Grade B	N/A	Not shown by station	N/A	N/A
	WTBY, Poughkeepsie, NY	Granted	Religious	61 avg. (elevated terrain and "other geographical obstacles")	No Grade B for majority of communities	N/A	No	Yes (closer New York and New Jersey stations with stronger nexus)	N/A
	WRNN, Kingston, NY	Granted	General	83 avg.	No Grade B	None	No (Some local coverage, but not enough to override considerable geographic distance)	Yes	N/A

<sup>3</sup> Systems in Southern Bergen County, New Jersey.

DATE RELEASED	DOCKET	FCC ACTION	FORMAT	DISTANCE (TERRAIN)	SERVICE CONTOUR	HISTORICAL CARRIAGE	LOCAL CONTENT	OTHER SERVICE	RATINGS
05/31/96	CSR-4019-A Continental Cablevision of Western New England, Inc. <sup>4</sup> (New York, NY ADI)								
	WTBY, Poughkeepsie, NY	Denied	Religious	37 avg.	Grade A	Some evidence	Yes	N/A	N/A
	WRNN, Kingston, NY	Denied	General	N/A	Grade B	N/A	Yes	N/A	N/A
	WHSE, Newark, NJ	Denied	Home shopping	28 avg.	Grade A	Yes	Yes	N/A	N/A
	WHSI, Smithtown, NY	Granted	General	54 avg.	No Grade B	None	No	Yes	N/A
	WMBC-TV, Newton, NJ	Granted <sup>5</sup>	Mixed (foreign language, religious and entertainment)	43 avg. (Hudson River)	No Grade B or on fringe	None	No	N/A	Low/none
	WMBC-TV, Newton, NJ (continued)	Denied <sup>6</sup>	Mixed (foreign language, religious and entertainment)	30 avg. (Hudson River)	Grade B, some Grade A	N/A	N/A	N/A	N/A
	WHA1-TV, Bridgeport, CT (Did not oppose petition)	Granted <sup>7</sup>	Home shopping	N/A (far side of Hudson River)	No Grade B	N/A	N/A	N/A	N/A

<sup>4</sup> System serving Rockland and Westchester counties.

<sup>5</sup> Granted with respect to Westchester County communities.

<sup>6</sup> Denied with respect to Rockland County communities.

<sup>7</sup> Granted with respect to Mt. Pleasant, North Tarrytown, Stony Point, West Haverstraw, Haverstraw, Pomona, Ramapo, Peekskill, Cortlandt, Buchanan, Croton-on-Hudson, Ossining.

DATE RELEASED	DOCKET	FCC ACTION	FORMAT	DISTANCE (TERRAIN)	SERVICE CONTOUR	HISTORICAL CARRIAGE	LOCAL CONTENT	OTHER SERVICE	RATINGS
		Denied <sup>8</sup>	Home shopping	"Reasonable proximity"	Grade B	N/A	N/A	N/A	N/A
	WLIG, Riverhead, NY	Granted	General	(1) 56 avg; (2) 45-52 (Long Island sound "effectively increases distances")	Majority outside Grade B; some on fringe	N/A	No (actually focused on Long Island)	Yes	N/A
05/31/96	CSR - 3873-A Cablevision Systems Corporation (New York, NY ADI)								
	WMBC, Newton, NJ	Granted <sup>9</sup>	Foreign language, religious and general	(1) 75 avg. from Fairfield County communities; (2) 78 avg. from upstate New York communities; (3) 78-130 avg. from Long Island communities. (Hudson River and New York City interfere with other communities, although distance is as little as 40 miles)	No Grade B or on fringe	None	No	Yes	Low/none

<sup>8</sup> Denied with respect to Pleasantville, Briarcliff Manor, Garrison and Bedford.

<sup>9</sup> Granted with respect to Long Island, upstate New York, New York City and Fairfield County Systems. Cablevision did not seek to modify service to Bayonne, Bergen, Newark, Monmouth and Riverview.



DATE RELEASED	DOCKET	FCC ACTION	FORMAT	DISTANCE (TERRAIN)	SERVICE CONTOUR	HISTORICAL CARRIAGE	LOCAL CONTENT	OTHER SERVICE	RATINGS
	WHA1-TV, Bridgeport, CT	Granted <sup>10</sup>	Home shopping	(1) 43-62 avg. from Long Island communities; (2) 57-100 avg. from New Jersey communities; (3) 56 and 69 avg. from New York City (Bronx and Brooklyn) communities; (4) 51 and 54 from upstate New York communities	No Grade B or "geographically separated" by Long Island sound	None	N/A	N/A	Low/none
		Denied <sup>11</sup>	Home shopping	36 and 42 avg.	Grade B	Yes	N/A	N/A	N/A
	WTBY, Poughkeepsie, NY	Granted <sup>12</sup>	Religious	(1) 66-106 avg. from Long Island communities; (2) 65-109 avg. from New Jersey communities; (3) 60 and 74 avg. from New York City communities	No Grade B; on fringe or geographic separation	None	No	Yes	Low/none

<sup>10</sup> Granted with respect to Long Island, New Jersey, New York City and upstate New York.

<sup>11</sup> Denied with respect to Portchester and Yorktown systems.

<sup>12</sup> Granted with respect to Long Island, New Jersey, and New York City.